

NEWS RELEASE

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**SUBSIDIARY OF McKESSON PLEADS GUILTY TO FELONY
AUDIT OBSTRUCTION CHARGE. McKESSON AND ITS SUBSIDIARY
AGREE TO PAY \$7.3 MILLION AS CRIMINAL FINE AND CIVIL PAYMENT**

Ronald J. Tenpas, United States Attorney for the Southern District of Illinois, announced on November 12, 2004, that TBC Products, Inc., a subsidiary of McKesson Medical-Surgical Minnesota and the McKesson Corporation ("McKesson"), pled guilty in the United States District Court for the Southern District of Illinois to a felony charge count of endeavoring to obstruct a federal audit. Sentencing is scheduled for February 18, 2004.

Pursuant to the plea agreement, the United States and **TBC Products, Inc.** agreed to recommend a sentence of five years probation and a criminal fine of \$4 million. Also announced today was a \$3,399,649 million civil settlement agreement between the United States and McKesson to resolve claims involving the Medicare program. The plea agreement requires TBC Products, Inc. and McKesson to cooperate fully with the United States in connection with the Government's ongoing investigations and prosecutions of others for alleged violations of federal criminal and civil law.

Today's action marks the latest criminal conviction arising from "Operation Headwaters," an undercover investigation by the Federal Bureau of Investigation, U.S. Postal Inspection Service, and Office of Inspector General for the Department of Health and Human Services, in which federal agents created an entity known as Southern Medical Distributors ("SMD"). While operating, SMD acted as

a distributor of medical supplies, and was approached by various manufacturers and distributors, including McKesson, who offered inducements to undercover personnel to purchase enteral products.

United States Attorney Ronald J. Tenpas stated, “Today is an important step forward for Operation Headwaters in our continuing efforts to investigate questionable marketing practices where nursing homes are offered free or deeply discounted durable medical equipment, such as enteral feeding pumps. As today's plea shows, these sales tactics frequently are used as a cover to obstruct Medicare’s ability to discover prohibited inducements, bribes, and kickbacks, such as fraudulent sub-market value equipment leases that are offered to secure other nursing home business in return. Such arrangements are often also used to prevent Medicare from monitoring the actual costs of durable medical equipment, an ability that is essential to Medicare maintaining a sensible health care reimbursement structure. These arrangements can create significant quality of care concerns for patients by providing substantial business incentives to make treatment decisions on the basis of profit, not the patient’s medical condition. We appreciate the efforts of McKesson and the Ross Products Division of Abbott Laboratories to cooperate with the ongoing investigation, and, through their pleas and their corporate integrity agreements, to reform and make more transparent the sale and marketing of durable medical equipment used by our Nation’s senior citizens.”

In a Stipulation filed at the time of the guilty plea, the parties agreed that TBC Products, formerly known as McKesson Medical-Surgical TBC Inc., is and has been a wholly owned subsidiary of McKesson Medical-Surgical Minnesota, which, in turn, is a wholly owned subsidiary of McKesson Corporation, a corporation publicly traded on the New York Stock Exchange, with a principal place of business in San Francisco, California. TBC Products, Inc. distributed enteral therapy products to skilled nursing facilities that provided the equipment directly to Medicare beneficiaries, and, for patients covered by Part B of the Medicare program, then submitted claims to the Medicare program

on behalf of the beneficiaries for reimbursement from Medicare. Employees of a McKesson Minnesota subsidiary counseled and advised customers regarding how Medicare reimburses for products.

Generally, enteral nutritional therapy products are health care products intended to assist patients who, because of disease or other disorder, are not able to digest and absorb an oral diet. Enteral nutritional therapy products provide nutritional requirements through a tube into the stomach or small intestine of such patients.

As set forth in the stipulation, the parties agreed that Medicare audited the records of suppliers to evaluate medical necessity and the amount of reimbursement to be provided for durable medical equipment such as enteral products. Medicare required persons who distribute, sell, or supply enteral products to maintain complete, accurate, and legible documentation, and to maintain and provide such documentation to Medicare during an audit. Also, when suppliers agreed to do business with Medicare, they were required to comply with all Medicare laws and regulations, including the Medicare Anti-Kickback statute, before receiving reimbursement from Medicare.

Specifically, the stipulation states that from September 12, 2000, through July 24, 2001, in St. Clair County, within the Southern District of Illinois, and elsewhere, TBC Products, Inc. and others knowingly endeavored to influence, obstruct, and impede a federal auditor in the performance of official duties relating to SMD. TBC Products, Inc. and others did so by sending and causing along with others the sending of seven invoices for pump rental fees via the United States Postal Service, regular mail, to SMD. Then, TBC Products, Inc. and others sent, and caused others to send, via the United States Postal Service, regular mail, a credit memo to SMD, in an amount approximately equal to the pump rental fees previously paid by SMD. TBC Products, Inc. and others advised SMD to present these documents to federal auditors in the event of a Medicare audit. TBC Products, Inc. and others intended and understood that each of the invoices and the credit memo would be subject to their

agreement with SMD not to state, if asked by a federal auditor, that the purpose of the credit memo was to offset the pump rental fees previously paid by SMD.

The stipulation continues, with the parties agreeing that the individuals who made these endeavors, as discussed above in this Stipulation and in the Information, violated material parts of McKesson's Corporate Compliance Program Code of Conduct. Further, at the time the invoices and credit memo were sent, Defendant and others believed it likely that SMD could soon be audited, as other enteral customers of McKesson Minnesota subsidiaries were undergoing Medicare audits regarding enteral pump reimbursement issues during the same time period in the same geographic area.

In addition, a civil settlement agreement between the United States, TBC Products, Inc. and McKesson contends that TBC and McKesson submitted, or caused others to submit, false claims for payment to the Medicare Program (Medicare) under HCPCS codes B9000 and B9002 in connection with or relating to a number of pump rental transactions, and further contends that TBC Products, Inc. and McKesson agreed to provide enteral nutrition infusion pumps to suppliers for free in exchange for the suppliers' agreements to buy related enteral therapy products from TBC and the Companies, in violation of the Medicare Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(1) & (2), and the express terms of the Medicare durable medical equipment supplier application. Moreover, the United States also contends that TBC and the Companies submitted, or caused others to submit, false claims to Medicare under HCPCS codes B9000, B9002, B4035, B4036, and B4150 for medically unnecessary enteral pumps and related enteral therapy products for certain claims. TBC agreed to pay to the United States \$3,299,899.00 for this conduct.

Finally, also in the civil settlement agreement, the Office of Inspector General for the Department of Health and Human Services contends that it has a cause of action against TBC and the Companies for supplying Southern Medical Distributors with enteral pumps at no cost to induce SMD

to enter into an agreement to buy related enteral therapy and other products. TBC Products, Inc. agrees to pay to the additional sum of \$99,750.00 for this conduct in exchange for a release of any claims under the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a.

As part of the civil settlement, **TBC Products, Inc.** will be permanently excluded from participation in the Medicare and Medicaid programs. McKesson has also entered into a five-year corporate integrity agreement with the HHS Office of Inspector General, requiring McKesson to reform the sales and marketing practices of its enteral feeding operations.

The case was investigated by the Federal Bureau of Investigation, the U.S. Postal Inspection Service, and the HHS Office of Inspector General. The criminal case was prosecuted by Assistant United States Attorney Andrew J. Lay and the civil case was handled by Assistant United States Attorney Gerald M. Burke.